

**NOT DESIGNATED FOR PUBLICATION**

**STATE OF LOUISIANA**

**COURT OF APPEAL**

**FIRST CIRCUIT**

**2012 CA 0148**

**ALYSON MARY BABCOCK**

**VERSUS**

**CHARLES DAVID MARTIN**

**CONSOLIDATED WITH**

**2012 CA 0149**

**CHARLES MARTIN**

**VERSUS**

**ALYSON BABCOCK**

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**On Appeal from the 32nd Judicial District Court  
Parish of Terrebonne, Louisiana  
Docket Nos. 143,450 and 157,528, Division "E"  
Honorable Randall L. Bethancourt, Judge Presiding**

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**BEFORE: PARRO, HUGHES, AND WELCH, JJ.**

*Welch, J., concurs. JEW by RHP*

**Judgment rendered** DEC 31 2012

**PARRO, J.**

Appellant challenges an order of protection issued against her in accordance with the domestic abuse assistance provisions of LSA-R.S. 46:2131, *et seq.* For the reasons that follow, we reverse.

**FACTUAL BACKGROUND AND PROCEDURAL HISTORY**

This is a highly contested domestic matter between the parents of a minor child. Alyson Mary Babcock and Charles David Martin were never married; however, they had a romantic and intimate relationship during the period of December 2003 through August 3, 2004. Of this relationship, one child, A.G.M.,<sup>1</sup> was born to the parties on September 20, 2004.<sup>2</sup>

Ms. Babcock and Mr. Martin shared joint custody of A.G.M., with Ms. Babcock designated as the domiciliary parent, until Mr. Martin was awarded sole custody pursuant to a consent judgment signed on December 1, 2008. In addition to granting sole legal and physical custody of A.G.M. to Mr. Martin, this consent judgment further provided that Ms. Babcock would have supervised visitation with A.G.M. once she complied with certain conditions, which required her to begin and maintain active mental health counseling, among other things. The judgment further required Ms. Babcock to execute certain documentation necessary to allow Mr. Martin to claim A.G.M. as a dependent on his federal and state income tax returns each year. Ms. Babcock was also ordered to produce the minor child's original birth certificate and social security card to the court.<sup>3</sup>

On June 4, 2009, Mr. Martin filed a rule to show cause why Ms. Babcock should not be held in contempt of court for violation of various judgments of the trial court, including the consent judgment signed on December 1, 2008. Mr. Martin further requested that Ms. Babcock, her agents, or assigns be enjoined from harassing him or

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<sup>1</sup> The minor child's name apparently was legally changed at some point during the course of these proceedings. We will use the initials of the child's name after it was finally changed.

<sup>2</sup> On October 21, 2004, Ms. Babcock filed a petition to establish filiation, custody, and visitation.

<sup>3</sup> The judgment was rendered in open court on October 2, 2008, but was not signed until December 1, 2008. However, Ms. Babcock was ordered to produce the birth certificate and social security card by October 6, 2008, at 3:00 p.m.

his family. A temporary restraining order was issued to that effect, and a hearing was set on the rule.

On the same June 4, 2009 date, in a separate proceeding, Mr. Martin also filed a petition for protection from abuse pursuant to the domestic abuse assistance provisions of LSA-R.S. 46:2131, et seq. This petition alleged that Ms. Babcock, her agents, and assigns had taken certain actions to harass, stalk, and threaten Mr. Martin and his family. The trial court also issued a temporary restraining order in this matter.

In both the rule to show cause and the petition for protection from abuse, Mr. Martin alleged that Ms. Babcock, her agents, and assigns had posted certain threats to Mr. Martin and his family, as well as derogatory information about him and his family, on a "MySpace" website account (the website). The pleadings further alleged that Ms. Babcock, her agents, and assigns stalked Mr. Martin and his family by repeatedly driving past his house and that they made repeated attempts to contact A.G.M. at her school, in violation of the trial court's orders. Finally, the pleadings alleged that Ms. Babcock, her agents, and assigns harassed members of Mr. Martin's family by e-mail.

The two matters were ultimately consolidated for hearing.<sup>4</sup> After numerous delays, the matters were heard on May 23 and 24, 2011. Subsequent to this hearing, the trial court issued a protective order prohibiting Ms. Babcock from going within 100 yards of Mr. Martin's residence or from contacting him or the minor child, directly or through a third party. The protective order further ordered Ms. Babcock not to "abuse, harass, stalk, follow, or threaten" Mr. Martin or the minor child. Ms. Babcock was also held in contempt of court for violation of prior court orders. For this contempt, she was sentenced to thirty days in the parish jail; however, this sentence was suspended upon Ms. Babcock's being placed on unsupervised probation for a period of eighteen months. During this time, she was not to commit a crime, and she was further required to maintain full-time employment. Ms. Babcock has appealed.<sup>5</sup>

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<sup>4</sup> The trial court considered the issue of child support at the same time. That issue is not before us on appeal.

<sup>5</sup> Louisiana Revised Statutes 46:2136(F) provides for a devolutive appeal from a final protective order.

## DISCUSSION

Upon good cause shown in an *ex parte* proceeding, the court may enter a temporary restraining order, without bond, as it deems necessary to protect from abuse the petitioner, any minor children, or any person alleged to be incompetent. LSA-R.S. 46:2135(A). Any person who shows immediate and present danger of abuse shall constitute good cause. Id. If a temporary restraining order is granted without notice, the matter shall be set for a hearing within twenty-one days for a rule to show cause why the protective order should not be issued, at which time the petitioner must prove the allegations of abuse by a preponderance of the evidence. LSA-R.S. 46:2135(B).

In an effort to meet this burden of proof, Mr. Martin testified about the website, "A Voice for [A.G.M.]" Mr. Martin testified that he was not sure who started the website, but he knew that someone in Ms. Babcock's family had started it. According to Mr. Martin, he felt threatened by posts on the website, although he acknowledged that his stepdaughters participated in conversations and wrote inflammatory posts on the website. Specifically, Mr. Martin referred to a post from Hallie Sevin, A.G.M.'s godmother, which stated, "[A.G.M.], my beautiful godchild, you're my world, I would kill to see you.<sup>6</sup> You will always have my heart." He also pointed to a post from Mary Babcock, Ms. Babcock's mother, which provided, in pertinent part, "Relax, her days before some people kick her ass are numbered ...."

Although Mr. Martin testified that he felt threatened by these and other statements on the website, he did not provide any evidence to prove by a preponderance of the evidence that Ms. Babcock was involved in the posting of these statements on the website. The above statements were clearly posted by people other than Ms. Babcock, and there is no evidence in the record to suggest that Ms. Babcock caused them to make these posts. Indeed, Mr. Martin testified that he did not know if Ms. Babcock wrote any of the posts on the website, and his only position with regard to the website was that he knew someone in Ms. Babcock's family had started it.

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<sup>6</sup> Ms. Sevin testified that she intended this statement to be an exaggeration and that she never meant that she intended to kill anyone.

At the hearing, Ms. Babcock's mother and sister, Mary Babcock and Angel Fitch, respectively, acknowledged creating and maintaining the website, as well as posting the information to it. Mary Babcock stated that she had kept diaries from the beginning of the court proceedings and she used those diaries to get the information to post on the website. According to Mary Babcock, Ms. Babcock was not involved in creating, maintaining, or providing information for the purpose of posting it on the website. Ms. Babcock also denied that she had any involvement with the website.

It is true that certain postings on the website were written in the first person and therefore appeared to have been written by Ms. Babcock. In her testimony, Mary Babcock acknowledged that she had originally written those posts from the third person point of view; however, after consultation with a friend who advised her that the posts were confusing, she changed them so that they were written from the first person point of view.

Mr. Martin also testified about attempts by Ms. Fitch to contact him and other members of his family. The evidence demonstrates that Ms. Fitch had some confrontational conversations with certain members of Mr. Martin's family. Ms. Fitch acknowledged that some of the statements she made were derogatory, and she stated that she would do things differently if she could. A review of the conversations indicates that both parties made inflammatory statements.<sup>7</sup>

Mr. Martin and his wife, Leslie Martin, testified that they were also victims of harassment and stalking, as various people drove by and stopped in front of their home. However, as the testimony indicated, the Martins' home is on a public street, and there is a stop sign right in front of their house. Furthermore, Mrs. Martin testified that the people driving by their house did not actually stop in front of the house, unless they were stopping at the stop sign.

The Martins testified that Mary Babcock, Ms. Fitch, and Ms. Sevin had driven by

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<sup>7</sup> Ms. Fitch apparently also called Mr. Martin at his home in an alleged violation of a restraining order. Mr. Martin testified that he informed her of the existence of the restraining order and hung up on her. He stated that she then called back to apologize. He did not state that she threatened him during either telephone call.

the house on various occasions.<sup>8</sup> Mrs. Martin also testified that she once saw Ms. Babcock as a passenger in a vehicle on her street when she passed the vehicle on her way to church. At the time Mrs. Martin saw her, Ms. Babcock was not in front of the Martins' house.<sup>9</sup> This was the only incident in which Ms. Babcock was alleged to have been a participant. Mr. Martin also testified about certain third parties who allegedly drove past the house and attempted to take pictures of him and his family; however, there was never any connection demonstrated between these third parties and Ms. Babcock or other members of her family.

Finally, the Martins testified concerning attempts by Ms. Fitch and Ms. Sevin to visit the minor child at school in an alleged violation of certain court orders. Ms. Fitch and Ms. Sevin visited the school on two occasions and brought gifts and cards signed by themselves, Ms. Babcock, and Mary Babcock. Ms. Fitch testified that she wanted to go to the school to see A.G.M., and Ms. Babcock gave her some gifts and cards to bring to the school for the child on her behalf, since she could not go herself. After the second time she and Ms. Sevin went, they were asked to leave, and they later received a letter from the principal of the school telling them not to come back.

As noted previously, Mr. Martin had the burden of proving the allegations of abuse against Ms. Babcock by a preponderance of the evidence. LSA-R.S. 46:2135(B). "Domestic abuse" is defined as including, but not limited to, "physical or sexual abuse and any offense against the person as defined in the Criminal Code of Louisiana, except negligent injury and defamation, committed by one family or household member against another." LSA-R.S. 46:2132(3). In reviewing the trial court's issuance of a protective order under LSA-R.S. 46:2131, et seq., the appellate court is to apply the abuse of discretion standard of review. Rouyea v. Rouyea, 00-2613 (La. App. 1st Cir. 3/28/01), 808 So.2d 558, 561.

A review of the record does not reveal any incidents of physical abuse

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<sup>8</sup> Mr. Martin was able to testify with specificity as to only twelve incidents of drive-bys. He contended that there were more incidents, but when he testified, he had a list of dates corresponding to twelve incidents of drive-bys dating from October 2010 to April 2011.

<sup>9</sup> For her part, Ms. Babcock denied passing in front of the Martins' house.

perpetuated by Ms. Babcock against Mr. Martin or A.G.M.<sup>10</sup> In addition, no allegations of sexual abuse were made or proven by Mr. Martin. The testimony and evidence in the record centered primarily around actions taken by third parties, rather than actions taken by Ms. Babcock herself. Although there is some evidence that suggests Ms. Babcock may have been in violation of a court order by giving gifts and cards to her sister to take to her daughter's school when she knew or should have known she could not have delivered them herself, this possible violation does not meet the threshold necessary for the issuance of a protective order pursuant to LSA-R.S. 46:2131, *et seq.* Furthermore, there is insufficient evidence of Ms. Babcock's involvement in the other acts complained of by the Martins to warrant the issuance of a protective order. Moreover, the acts complained of by the Martins, even if accepted as true, are insufficient to warrant the issuance of a protective order. Simply put, family arguments that do not rise to the threshold of physical or sexual abuse or violations of the criminal code are not within the ambit of the domestic abuse assistance provisions of LSA-R.S. 46:2131, *et seq.* Rouyea, 808 So.2d at 561. After a thorough review of the record, we conclude that Mr. Martin failed to carry his burden of proving by a preponderance of the evidence the allegations of abuse against Ms. Babcock, and the trial court clearly abused its discretion in determining otherwise.

#### **DECREE**

For the foregoing reasons, the May 24, 2011 protective order is hereby reversed. The trial court is ordered to take the appropriate steps to set aside the protective order within 45 days of the date of the finality of this decision, to file a copy of its action with this court, and to have it removed from the Louisiana protective order registry. See Rouyea, 808 So.2d at 562. All costs of this appeal are assessed to Charles David Martin.

#### **REVERSED WITH INSTRUCTIONS.**

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<sup>10</sup> Indeed, when asked, Mr. Martin denied that Ms. Babcock had ever struck him. Furthermore, no allegations of physical abuse as to A.G.M. were made in the pleadings.